



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1995

Ms. Suzanne E. Giesecke
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR95-085

Dear Ms. Giesecke:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29623.

The Texas Department of Agriculture (the "department") received a request for information concerning complaints and statistics about violations of the state's pesticide laws and regulations. The requestor also sought information about complaints and enforcement actions against two individuals during and between the years 1988 and 1992. We assume that the statistical information has been provided, since you are not seeking a decision concerning that information. However, you have submitted to this office several documents that appear to be responsive to the request for information about complaints and enforcement action against the two individuals. You contend that the information is protected from disclosure as attorney work product under section 552.101 of the Government Code.

Section 552.101 provides an exception for information that is "considered to be confidential by law." You rely upon Open Records Decision No. 304 (1982) for the argument that attorney work product is protected from disclosure under section 552.101. However, in Open Records Decision No. 574 (1990), this office overruled Open Records Decision No. 304 to the extent that it indicated attorney work product is protected under section 552.101. Open Records Decision No. 574, at 6. We stated that although attorney work product is not excepted from disclosure under section 552.101, the section 552.103(a) exception is applicable to attorney work product. *Id.*; *See also* Open Records Decision No. 429 (1985).

To show the applicability of section 552.103(a), a governmental entity has the burden of showing that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. However, the department has not met its burden under section 552.103 because information was not provided to this office showing that litigation is pending or reasonably anticipated.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', is written over a horizontal line.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/LRD/rho

Ref.: ID# 29623

Enclosures: Submitted documents

cc: Ken Dilanian
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(w/o enclosures)